



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Assignee Hewlett-Packard Development Company, L.P.
Group Art Unit 2157
Examiner L. Jacobs
Attorney's Docket No. PDNO. 10010982-1
Confirmation No. 8644
Title: Method, Server And System For Dynamic Server Application Adjustment

BRIEF OF APPELLANT

To: Mail Stop Appeal Brief-Patents
Commissioner of Patents
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Appellant appeals from the final rejection, mailed April 5, 2005, of claims 1-49. The Commissioner is authorized to charge the fee required under 37 C.F.R. § 41.20(b)(2) to Deposit Account No. 08-2025.

CERTIFICATE OF MAILING

I hereby certify that this correspondence and every paper referred to therein as being deposited the United States Postal Service, as First Class Mail in an envelope addressed to:
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on September 6, 2005 (Date of Deposit)

EDMOND A. DEFRAK

By


Signature

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Brief of Appellant

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I. REAL PARTY IN INTEREST

The real party in interest of this application is Hewlett-Packard Development Company, L.P. as evidenced by the full assignment of the pending application to Hewlett-Packard Company recorded starting at Reel 012713, Frame 0010, and the full assignment to Hewlett-Packard Development Company, L.P. recorded at Reel 014061, Frame 0492, in the Assignment Branch of the Patent and Trademark Office.

II. RELATED APPEALS AND INTERFERENCES

Appellant's undersigned legal representative and the assignee of the pending application are aware of no appeals or interferences which will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF THE CLAIMS

Claims 1-49 are pending and stand finally rejected. Appellant appeals the rejection of claims 1-49.

IV. STATUS OF AMENDMENTS

No amendments have been filed after the final rejection mailed April 5, 2005.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Concise explanations of the subject matter defined in the independent claims and dependent claims involved in the appeal follow with respect to exemplary illustrative embodiments of the specification and figures.

Referring to independent claims 1, 15, 27, and 39, exemplary methods are shown in FIGS. 1-3 and described at paragraphs [0019-0034] of the specification. As shown in FIG. 1, the steps include preparing 102 a file in a tag-based language format wherein the file includes a desired change in operation of the application, sending 104 the file in the tag-based language format to the server, and dynamically changing 106 the application during server operation and without shutting the server down or recompiling the server by implementing the file in the tag-based language format via a control panel that is coupled to the server. The tag-

based language format may be, for example, an eXtensible Markup Language (XML) format, a ColdFusion.RTM. Markup Language (CFML) format or a Wireless Markup Language (WML) format. The file in the tag-based language format may include a style sheet. For example, the extensible Style Language (XSL) may be used for the style sheet when XML is used as the tag-based language format. Generally, the style sheet is arranged to permit a user to examine contents of a desired file remotely, generate at least one custom question, generate at least one secure question, and/or remotely adjust the desired file. If the file in the tag-based language format is a log file, the file may include diagnostic information.

Also, as shown in FIG. 2, the method dynamically adjusts the operation of a server application by using 202 a servlet as a form-based interface to a server wherein the servlet includes a desired change in operation of the application as a file in a tag-based language format and dynamically changing 204 the application during server operation by implementing the file in the tag-based language format via a control panel that is coupled to the server. Some examples of tag-based language formats that may be used are set forth above. The forms-based interface generally permits querying log interface information from a web browser and/or filtering log interface information from a web browser. Where the file in the tag-based language format includes a style sheet, if desired, the XSL format may be used to provide formatting for a file in the XML format.

In one embodiment of the independent claims, as shown in FIG. 3, a dynamically adjustable server includes a computer 302, coupled to the Internet 304 and having at least a processor 306 with a tag-based language format engine 308, a memory 310 coupled to the processor 306 and having stored thereon at least a set of files 312 for each selected supported service and a control unit 314 arranged to communicate with the processor 306, for providing instructions for dynamically adjusting at least one file for at least one application. Sample tag-based language formats are set forth above. At least one of the set of files may be dynamically adjustable using instructions in extensible Style Language (XSL) format for a file in the XML format. Where the instructions are in the tag-based language format, such instructions may be arranged to permit a user to examine contents of a desired file remotely, generate at least one custom question, generate at least one secure question, and/or remotely adjust the desired file.

In addition, with regard to the dependent claims, as shown in FIG. 4, an embodiment is described for dynamically adjusting operation of at least one server application. The system includes a remote control unit 402 that is arranged to communicate with a dynamically adjustable server 404. The remote control unit 402 may use a servlet as a form-based interface for the server wherein the servlet includes a desired change in operation of the application as a file in the tag-based language format. The dynamically adjustable server 404 is arranged to communicate with the remote control unit 402 and provides for dynamically changing the at least one server application during server operation by implementing the file in the tag-based language format. Where desired, the forms-based interface may permit querying log interface information from a web browser and/or filtering log interface information from a web browser. The dynamically adjustable server 402 may communicate with the remote control unit 404 via the Internet or may, where desired, be arranged to communicate directly, for example, by being connected by wires or wirelessly (see FIG. 4).

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

- A. The 112 rejection of claims 1, 15, 27, and 39.
- B. The 103 rejection of claims 1, 2, 6-8, 11-16, 21-28, 31-34, 37-40, and 45-49.
- C. The 103 rejection of claims 3-5, 18-20, 29-30, and 42-44.
- D. The 103 rejection of claims 9-10, 17, 35-36, and 41.

VII. ARGUMENT

A. Claims 1, 15, 27, and 39 comply with the written description requirement.

On page 2 of the Final Office Action dated April 5, 2005, the Examiner

incorrectly stated that the "...claim(s) contains subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention...The application does not support the amended portion of the claim limitation "without shutting the server down or recompiling the server." The Examiner then summarily stated, without providing any support, that "[T]he specification is not enabling with respect to the claims at issue because all the methods needed to practice this invention is not well known."

According to Stahelin v. Seher, 24 USPQ2d, 1513 (B.P.A.I. 1992), "[I]t has been consistently held that the first paragraph of 35 USC 112 required nothing more than objective enablement...How such a teaching is set forth, whether by use of illustrative examples or by broad descriptive terminology, is of no importance since a specification which teaches how to make and use the invention in terms which correspond in scope to the claims *must* be taken as complying with the first paragraph of 35 USC 112 *unless* there is a reason to doubt the objective truth of the statements relied upon there for enabling support." Id. At 1516 (citing In re Marzocchi, 439 F.2d 220, 169 USPQ 367 (C.C.P.A. 1971)) (emphasis in original).

The Appellant submits that the original specification does not contain any reason to doubt the Figures or description for the claimed elements of "...dynamically changing the application during server operation without shutting the server down or recompiling the server implementing the file in the tag-based language format via a control panel that is coupled to the server." In fact, the Summary in paragraph [00015], the Detailed Description throughout paragraphs [00019] through [00033], and FIGS. 1-3, describe dynamically changing the application during server operation without shutting the server down or recompiling the server using tag-based language format that would enable one of ordinary skill in the art to make or use the invention without undue experimentation.

This is because the concept of writing a file in a tag-based language format such as, for example, an XML or XSL format, allows the file to be inserted in a servlet and sent to the server to dynamically change a desired file, such as for example, a logging level, in the server application, as described in paragraph [0019] with reference to Figs. 1-3, would be readily understood by any skilled network server programmer and/or tag-based language programmer. Examiners can only

reasonably doubt an invention's asserted utility if the written description "suggests an inherently unbelievable undertaking or involves implausible scientific principles," which is clearly not the case here. In re Cortright, 49 USPQ 2d 1464, 1466 (Fed. Cir. 1999).

In addition, as described in paragraphs [0019-0022, 0024-0028, and 0031-0032], using the tag-based language and servlets allows the control unit to be used to dynamically change the amount of information being logged if difficulties are encountered logging onto the system, and thus, a determination can be made regarding the cause of the problem without shutting down the system. Needed information can then be culled by filtering information at the server or querying the application using a web browser. As a result, as opposed to the traditional systems that need to be shut down in order to adjust a parameter or adjust a logging level, the present claimed invention allows the user to adjust the system "on the fly."

The Federal Circuit has clearly stated that patent applications should be written for persons familiar with the relevant field; the patentee is not required to include in the specification specific programming code as long as the concept is readily understood by practitioners. Otherwise, every patent would be written as a comprehensive tutorial and treatise for the generalist, instead of a concise statement for persons in the field. Verve LLC v. Crane Cams Inc., 311 F.3d 1116, 65 USPQ 2d 1051, 1053-54 (Fed. Cir. 2002).

For example, the court in Enzo Biochem, Inc. v. Calgene, Inc., 52 USPQ 2d 1129, 1135-36 (Fed. Cir. 1999) concluded that a patent specification complies with the statute even if a "reasonable" amount of routine experimentation is required in order to practice a claimed invention, as long as the experimentation is not undue. As such, the description in the specification provides enough enabling support for the claimed "dynamically changing the application during server operation without shutting the server down." Thus, for the reasons as set forth above, the Appellant submits that the rejection should be withdrawn because the claims are enabling and comply with 35 U.S.C. § 112, first paragraph.

Moreover, the Appellant submits that the rejection under 35 U.S.C. Section § 112 should be withdrawn because the Examiner has not provided a prima facie case to support her rejections under U.S.C. Section § 112, first paragraph. In particular, contrary to the Examiner's statement, it is well settled that in order for an Examiner

to maintain a prima facie case of not satisfying U.S.C. Section § 112, first paragraph, the Examiner must provide the following: a rational basis as to why the disclosure does not teach or why to doubt the objective truth of the statements in the disclosure that purport to teach; the manner and process of making and using the invention that corresponds to the scope of the claims to one of ordinary skill in the art requires undue experimentation; and it deals with subject matter that would not already be known to the skilled person as of the filing date of the application.

Ajinomoto Co., Inc. v. Archer-Daniels-Midland Co., 228 F3d 1338, 56 USPQ 1332, 1136 (Fed. Cir 2000), *cert. denied*, 532 U.S. 1019 (2001).

Merely stating an unsupported conclusion that the "...amended portion of the limitation is not support [sic] by the specification..." is not enough for the Examiner to maintain a non-enablement rejection. **Enzo Biochem, Inc. v. Calgene, Inc.**, 188 F.3d 1362, 52 USPQ2d 1129 (Fed. Cir. 1999). **In re Wright**, 27 USPQ 2d 1510, 1513 (Fed. Cir. 1993). The CCPA has stated that the "PTO has the burden of giving reasons, supported by the record as a whole, why the specification is not enabling...Showing that the disclosure entails undue experimentation is part of the PTO's initial burden..." **In re Angstadt**, 190 USPQ 214, 219 (C.C.P.A. 1976). Although the Examiner attempted to bypass this requirement by summarily stating that "...all methods needed to practice this invention is [sic] not well known...", the Appellant submits that the Examiner is not permitted to do so.

Moreover, the Examiner is required to set forth a reasonable explanation as to why she believes that the written description does not satisfy U.S.C. Section § 112, first paragraph, for supporting the scope of protection provided by the claim; this includes, of course, providing sufficient reasons for doubting any assertions in the specification as to the scope of enablement, the rejection must be withdrawn. Because the Examiner has not given a detailed explanation, supported by the record as a whole, why the specification is not enabling, including a showing that the disclosure entails undue experimentation, the rejection must be withdrawn. **In re Wright**, 27 USPQ 2d 1510, 1513 (Fed. Cir. 1993). **In re Angstadt**, 190 USPQ 214, 219 (C.C.P.A. 1976).

Appellant respectfully submits that the original specification complies with the written description requirement with respect to claims 1-49 and the rejection is in error.

B. Since the Examiner admitted that all of the Appellant's claimed features are not disclosed by the combined cited references, the rejections under 35 U.S.C. § 103(a) are moot because the claims are enabling.

On page 15 of the April 5, 2005 Office Action, the Examiner admitted that the combined cited references do not disclose all of the Appellant's claimed features. However, the features that the Examiner admitted were clearly not disclosed by the cited references were the features that the Examiner rejected under 35 U.S.C. § 112, first paragraph, as not being supported by the specification. Therefore, the Examiner apparently ignored these features that are admittedly not disclosed, taught, or suggested by the combined cited references and completely relied on her rejections under 35 U.S.C. § 112, first paragraph.

According to case law and the MPEP, all of the claimed elements of an Appellant's invention **must be considered**. (*In re Kotzab*, 55 USPQ 2d 1313, 1318 (Fed. Cir. 2000). *MPEP 2143.*). If **one** of the elements of the Appellant's invention is **missing** from or not taught in the cited references and the Appellant's invention has advantages not appreciated by the cited references, then no prima facie case of obviousness exists. (*MPEP 2143.03*). The Federal Circuit Court has stated that it was error not to distinguish claims over a combination of prior art references where a material limitation in the claimed system and its purpose was not taught therein. *In Re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Since the Examiner has admitted on page 15 of the April 5, 2005 Office Action that the cited combined references do not disclose all of the Appellant's claimed features, this rejection is moot. Namely, the Examiner stated that "Dodrill et al in combination with Mogul et al clearly do not disclose the Applicant's claimed dynamically changing the application during server operation **without shutting the server down or recompiling the server** implementing the file in the tag-based language format via a control panel that is coupled to the server." The Appellant agrees with this statement by the Examiner. Hence, the rejections under 35 U.S.C. § 103(a) are moot because, as argued above, the claims are enabling.

Appellant respectfully submits the claims are allowable for at least the above-mentioned compelling reasons.

F. Conclusion

In view of the foregoing, reversal of the rejections of the claims is respectfully requested. For any one of the above-stated reasons, the rejections of the respective claims should be reversed. In combination, the above-stated reasons overwhelmingly support such reversal. Accordingly, Appellant respectfully requests that the Board reverse the rejections of the claims.

Respectfully submitted,

Date: ___ Sept. 6, 2005 ___

Attorney: _____



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VIII. CLAIMS APPENDIX

1 1. [Previously Presented] A method for adjusting operation of an
2 application of a server during operation of the server, comprising the steps of:
3 preparing a file in a tag-based language format wherein the file includes a
4 desired change in operation of the application;
5 sending the file in the XML format to the server; and
6 dynamically changing the application during server operation without
7 shutting the server down or recompiling the server by implementing the file in
8 the tag-based language format via a control panel that is coupled to the server.

1 2. [Original] The method of claim 1 wherein the tag-based language
2 format is one of: an eXtensible Markup Language (XML) format, a
3 ColdFusion.RTM. Markup Language (CFML) format and a Wireless Markup
4 Language (WML) format.

1 3. [Original] The method of claim 1 wherein the file in the tag-based
2 language format includes a style sheet.

1 4. [Original] The method of claim 3 wherein the style sheet is in
2 extensible Style Language (XSL) and the file is in XML format.

1 5. [Original] The method of claim 3 wherein the style sheet is
2 arranged to at least one of: permit a user to examine contents of a desired file
3 remotely, generate at least one custom question, and generate at least one
4 secure question, and remotely adjust the desired file.

1 6. [Original] The method of claim 1, wherein the file in the tag-based
2 language format is a log file.

1 7. [Original] The method of claim 6 wherein the log file includes
2 diagnostic information.

1 8. [Original] The method of claim 1 wherein the file in the tag-based
2 language format is a log file and the step of preparing the file in the tag-based
3 language format includes placing the log file in a control panel servlet prior to
4 sending the file to the server.

1 9. [Original] The method of claim 8 wherein the control panel servlet
2 provides a forms-based interface that permits a user to query log interface
3 information from a web browser.

1 10. [Original] The method of claim 8 wherein the control panel servlet
2 provides a forms-based interface that permits a user to filter log interface
3 information from a web browser.

1 11. [Original] The method of claim 1 wherein the application is a
2 logging application and the step of dynamically changing the application includes
3 dynamically changing a logging level of the application.

1 12. [Original] The method of claim 1 wherein the file in the tag-based
2 language format includes at least one desired change in operation of at least one
3 other application.

1 13. [Original] The method of claim 12 further including dynamically
2 changing the at least one other application during server operation by
3 implementing the file in the tag-based language format via a control panel that is
4 coupled to the server.

1 14. [Original] The method of claim 13 wherein dynamically changing
2 the at least one other application during server operation includes dynamically
3 changing a logging level of the at least one other application.

1 15. [Previously Presented] A method for dynamically adjusting
2 operation of a server application, comprising the steps of:

3 using a servlet as a form-based interface to a server wherein the servlet
4 includes a desired change in operation of the application as a file in a tag-based
5 language format; and

6 dynamically changing the application during server operation without
7 shutting the server down or recompiling the server by implementing the file in
8 the tag-based language format via a control panel that is coupled to the server.

1 16. [Original] The method of claim 15 wherein the tag-based language
2 format is one of: an eXtensible Markup Language (XML) format, a
3 ColdFusion.RTM. Markup Language (CFML) format and a Wireless Markup
4 Language (WML) format.

1 17. [Original] The method of claim 15 wherein the forms-based
2 interface permits at least one of: querying log interface information from a web
3 browser and filtering log interface information from a web browser.

1 18. [Original] The method of claim 15 wherein the file in the tag-based
2 language format includes a style sheet.

1 19. [Original] The method of claim 18 wherein the style sheet is in
2 extensible Style Language (XSL) and the file is in XML format.

1 20. [Original] The method of claim 19 wherein the style sheet is
2 arranged to at least one of: permit a user to examine contents of a desired file
3 remotely, generate at least one custom question, generate at least one secure
4 question and remotely adjust the desired file.

1 21. [Original] The method of claim 15, wherein the file in the tag-
2 based language format is a log file.

1 22. [Original] The method of claim 21 wherein the log file includes
2 diagnostic information.

1 23. [Original] The method of claim 15 wherein the application is a
2 logging application and the step of dynamically changing the application during
3 server operation includes dynamically changing a logging level of the application.

1 24. [Original] The method of claim 15 wherein the file in the tag-based
2 language format includes at least one desired change in operation of at least one
3 other application.

1 25. [Original] The method of claim 15 further including dynamically
2 changing the at least one other application during server operation by
3 implementing the file in the tag-based language format via a control panel that is
4 coupled to the server.

1 26. [Original] The method of claim 25 wherein dynamically changing
2 the at least one other application during server operation includes dynamically
3 changing a logging level of the at least one other application.

1 27. [Previously Presented] A dynamically adjustable server comprising:
2 a computer, coupled to the Internet and having at least a processor with a
3 tag-based language format engine, a memory coupled to the processor and
4 having stored thereon at least a set of files for each selected supported service
5 and a control unit arranged to communicate with the processor, for providing
6 instructions for dynamically adjusting at least one file for at least one application
7 while the server is operating and without shutting it down or recompiling it.

1 28. [Original] The server of claim 27 wherein the tag-based language
2 format engine includes at least one of the following tag-based language formats:
3 an extensible Markup Language (XML) format, a ColdFusion.RTM. Markup
4 Language (CFML) format and a Wireless Markup Language (WML) format.

1 29. [Original] The server of claim 27 wherein at least one of the set of
2 files is in XML format and is dynamically adjustable using instructions in
3 extensible Style Language (XSL) format.

1 30. [Original] The server of claim 29 wherein the instructions in the
2 XSL language format are arranged to at least one of: permit a user to examine
3 contents of a desired file remotely, generate at least one custom question, and
4 generate at least one secure question, and remotely adjust the desired file.

1 31. [Original] The server of claim 27 wherein at least one of the set of
2 files is dynamically adjustable using instructions in the tag-based language
3 format.

1 32. [Original] The server of claim 31, wherein the file in the tag-based
2 language format is a log file.

1 33. [Original] The server of claim 32 wherein the log file includes
2 diagnostic information.

1 34. [Original] The server of claim 32 wherein the file in the tag-based
2 language format is a log file and is dynamically adjusted by a servlet file sent
3 from a control panel.

1 35. [Original] The server of claim 34 wherein the servlet sent from the
2 control panel provides a forms-based interface that permits a user to query log
3 interface information from a web browser.

1 36. [Original] The server of claim 34 wherein the servlet sent from the
2 control panel provides a forms-based interface that permits a user to filter log
3 interface information from a web browser.

1 37. [Original] The server of claim 27 wherein the instructions are
2 implemented by a logging application and a logging level is dynamically changed.

1 38. [Original] The server of claim 27 wherein the file in the tag-based
2 language format includes at least one desired change in operation of at least one
3 other application.

1 39. [Previously Presented] A system for dynamically adjusting
2 operation of at least one server application, comprising:
3 a remote control unit, arranged to communicate with a dynamically
4 adjustable server, for using a servlet as a form-based interface for the server
5 wherein the servlet includes a desired change in operation of the at least one
6 server application as a file in a tag-based language format; and
7 the dynamically adjustable server, arranged to communicate with the
8 remote control unit, for dynamically changing the at least one server application
9 during server operation without shutting the server down or recompiling the
10 server by implementing the file in the tag-based language format.

1 40. [Original] The system of claim 39 wherein the tag-based language
2 format includes at least one of the following tag-based language formats: an
3 extensible Markup Language (XML) format, a ColdFusion.RTM. Markup
4 Language (CFML) format and a Wireless Markup Language (WML) format.

1 41. [Original] The system of claim 39 wherein the forms-based
2 interface permits at least one of: querying log interface information from a web
3 browser and filtering log interface information from a web browser.

1 42. [Original] The system of claim 39 wherein the file in the tag-based
2 language format includes a style sheet.

1 43. [Original] The system of claim 42 wherein the style sheet is in
2 extensible Style Language (XSL) and the file is in XML format.

1 44. [Original] The system of claim 42 wherein the style sheet is
2 arranged to at least one of: permit a user to examine contents of a desired file

3 remotely, generate at least one custom question, generate at least one secure
4 question and remotely adjust the desired file.

1 45. [Original] The system of claim 39, wherein the file in the tag-
2 based language format is a log file.

1 46. [Original] The system of claim 45 wherein the log file includes
2 diagnostic information.

1 47. [Original] The system of claim 39 wherein the at least one server
2 application is a logging application and the step of dynamically changing the
3 logging application during server operation includes dynamically changing a
4 logging level of the logging application.

1 48. [Original] The system of claim 39 wherein the file in the tag-based
2 language format includes at least one desired change in operation of at least one
3 other server application and dynamically changes the at least one other server
4 application during server operation by implementing the file in the tag-based
5 language format.

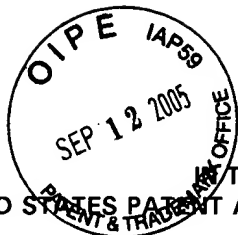
1 49. [Original] The system of claim 48 wherein a logging level of the at
2 least one other server application is changed.

IX. EVIDENCE APPENDIX

Copies of evidence are not enclosed.

X. RELATED PROCEEDINGS APPENDIX

Appellants are not aware of any related proceedings.



UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Mark R. Newsome

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Title: METHOD, SERVER AND SYSTEM FOR DYNAMIC SERVER APPLICATION ADJUSTMENT

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Commissioner For Patents
PO Box 1450
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TRANSMITTAL OF APPEAL BRIEF

Sir:

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on July, 5, 2005.

The fee for filing this Appeal Brief is (37 CFR 1.17(c)) \$500.00.

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

() (a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d) for the total number of months checked below:

- () one month \$120.00
- () two months \$450.00
- () three months \$1020.00
- () four months \$1590.00

() The extension fee has already been filled in this application.

(X) (b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

Please charge to Deposit Account **08-2025** the sum of \$500.00. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees. A duplicate copy of this sheet is enclosed.

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Signature: [Signature]

Respectfully submitted,

Mark R. Newsome

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